

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JOSEPH S. HAZELL,

Plaintiff,

V.

BP PRODUCTS NORTH
AMERICA INC.,

Defendant,

FILED JUL 11 2002

CIVIL ACTION

No. 02-CV-2866

**DEFENDANT'S ANSWER AND
AFFIRMATIVE DEFENSES TO COMPLAINT**

Defendant BP Products North America Inc. (“BP”) hereby answers the Complaint of Plaintiff Joseph S. Hazell (“Plaintiff”) as follows: BP denies each and every averment of the Complaint except as expressly admitted below.

Jurisdiction and Venue

1. BP admits that Plaintiff purports to bring this action pursuant to Title VII of the Civil Rights act of 1964, as amended, 42 U.S.C. §2000e et seq. (“Title VII”) and the Pennsylvania Human Relations Act, 43 P.S. §951 et seq. (“PHRA”), but denies that it has violated Plaintiff’s rights under those statutes and further denies that Plaintiff is entitled to relief from BP pursuant to those statutes or on any other basis. BP admits the remaining allegations contained in Paragraph 1 of the Complaint.

2. Admitted.

Parties

3. BP is without knowledge or information sufficient to form a belief as to the truth of the averments concerning Plaintiff's residency status and current address contained in Paragraph 3 of the Complaint, and accordingly, said averments are deemed denied.

4. BP admits that it is incorporated in the State of Maryland. By way of further answer, BP states that its principal place of business is in the State of Illinois. BP denies the remaining allegations contained in Paragraph 4 of the Complaint.

5. Admitted.

Facts

6. BP admits that Plaintiff is an African American. BP is without knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in Paragraph 6 of the Complaint, and accordingly, said averments are deemed denied.

7. BP admits that Plaintiff speaks with an accent. BP is without knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in Paragraph 7 of the Complaint, and accordingly, said averments are deemed denied.

8. Admitted.

9. BP admits that Plaintiff was assigned to the BP station located at 2200 Island Avenue, Philadelphia. By way of further answer, BP states that Plaintiff first trained at Station No. 4518 in Philadelphia before being assigned in May 2001 to the 2200 Island Avenue site.

10. BP is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 10 of the Complaint, and accordingly, said averments are deemed denied.

11. Denied.

12. Denied.

13. Denied.

14. Denied.

15. Admitted.

16. BP admits that a market reorganization in Philadelphia occurred in July 2001 and that Plaintiff began reporting to a new supervisor at that time. BP denies the remaining allegations contained in Paragraph 16 of the Complaint.

17. BP admits that Plaintiff began reporting to Company Account Executive John Sommer subsequent to the market reorganization. BP denies the remaining allegations contained in Paragraph 17 of the Complaint.

18. Denied.

19. Denied.

20. Admitted.

21. BP admits that its policy prohibited site managers from implementing increased prices at the pump until after they had first changed the prices on the station's signs and that plaintiff was instructed regarding this policy. The remaining averments of Paragraph 21 contain conclusions of law to which no response is required.

22. BP is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 22 of the Complaint, and accordingly, said averments are deemed denied.

23. To the extent that Paragraph 23 contains conclusions of law, no response is required. BP is without knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in Paragraph 23 of the Complaint, and accordingly, said averments are deemed denied.

24. BP admits that Plaintiff was terminated on August 13, 2001 for reasons including the failure to implement a price change at the gas pump. BP denies the remaining allegations contained in Paragraph 24 of the Complaint.

25. BP denies that Plaintiff had never been told by anyone at BP that he was authorized to purchase numbers for station signs. BP is without knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in Paragraph 25 of the Complaint, and accordingly, said averments are deemed denied.

26. Denied.

27. Denied.

28. Denied.

29. Admitted.

30. BP admits that the termination of an African-American Site Manager by John Sommer was reduced to a written disciplinary notice after the employee requested review by the BP Human Resources department. BP denies the remaining allegations contained in Paragraph 30 of the Complaint.

31. Denied.

32. Denied.

33. Denied.

34. BP admits that Plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission, which charge speaks for itself, and that Plaintiff requested dual filing with the Pennsylvania Human Relations Commission. BP denies the remaining allegations contained in Paragraph 34 of the Complaint.

35. BP admits that Plaintiff was issued a Notice of Right to Sue by the EEOC. BP is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 35 of the Complaint, and accordingly, said averments are deemed denied.

Count I
Violation of Title VII

36. BP incorporates its responses to Paragraphs 1 through 35 as if set forth at length herein.

37. Denied.

Count II
Violation of P.H.R.A.

38.¹ BP incorporates its responses to Paragraphs 1 through 37 as if set forth at length herein.

39.² Denied.

WHEREFORE, BP requests that the Court dismiss the Complaint with prejudice and enter any further relief, including costs and attorneys' fees to BP, as this Court deems appropriate.

AFFIRMATIVE DEFENSES

1. The Complaint, and each cause of action purportedly contained therein, fails to state a claim upon which relief can be granted and thus should be dismissed.
2. Plaintiff's claims are barred or offset by his failure to mitigate any claim for loss or damage.
3. Plaintiff is not entitled to any damages, as none were incurred.

¹ This paragraph is misnumbered in the Complaint as Paragraph 34.

² This paragraph is misnumbered in the Complaint as Paragraph 35.

4. To the extent that the Complaint asserts claims under Title VII that were not alleged in a relevant, valid and timely charge of discrimination filed by Plaintiff with the Equal Employment Opportunity Commission, such claims are barred due to Plaintiff's failure to exhaust his administrative remedies.

5. Plaintiff unreasonably failed to take advantage of the preventive or corrective opportunities provided by BP to address his complaints.

6. To the extent Plaintiff asserts a claim for physical and/or emotional injuries as a result of his employment, the exclusive remedy for such alleged injury is the Pennsylvania Workers' Compensation Act and therefore Plaintiff is precluded from asserting such claims in this action.

7. BP expressly reserves all affirmative defenses, rights and remedies at law and in equity that become applicable based on information gathered during discovery.

WHEREFORE, BP requests that this Court dismiss the Complaint with prejudice and enter any further relief, including costs and attorneys' fees to BP, as this Court deems appropriate.



Edward T. Ellis
Attorney I.D. No. 23680
Janice G. Dubler
Attorney I.D. No. 76578
Montgomery, McCracken, Walker & Rhoads, LLP
123 South Broad Street
Philadelphia, PA 19109-1099

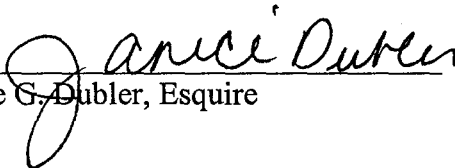
Attorneys for Defendant
BP Products North America Inc.

Dated: July 9, 2002

CERTIFICATE OF SERVICE

I, Janice G. Dubler, do hereby certify that on the 9th day of July, 2002, I served a true and correct copy of the foregoing Defendant's Answer and Affirmative Defenses to Complaint, via U.S. First Class Mail, postage prepaid, upon the following individuals at the address indicated:

Nancy C. DeMis, Esquire
Dena B. Calo, Esquire
Gallagher, Schoenfeld, Surkin & Chupein, P.C.
25 West Second Street
Media, PA 19063-0900


Janice G. Dubler, Esquire

Horner, Patricia

From: Nugent, Phyllis
Sent: Tuesday, July 16, 2002 3:41 PM
To: Dubler, Janice
Cc: Horner, Patricia
Subject: Telephone call

A telephone call came in on Tuesday, 7/16/02, to Janice from Fernando Benitez of U.S.D.C. regarding a PDF formatted disc that was forwarded to them in the Joseph Hazel v. BP Products case. There were two documents on the disc and he said that each document must be formatted on separate discs even though it's the same case. The pleadings were an Entry of Appearance and Motion for Admission Pro Hac Vice. His direct phone line is 267-299-7006.

I told him you were both on vacation and it would be taken care of as soon as Janice's secretary returned next week. He was satisfied with that.

Phyllis M. Nugent, ext. 7743

Montgomery, McCracken, Walker & Rhoads, LLP

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